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Date: December 20, 2004

VIA FACSIMILE

Facsimile No.: (703) 872-9314

Sent by: Laurie

Office Telephone No.: (703) 305-5598

Reference No.: 20/28

To: Examiner Justin I. Michalski
Art Unit 2644
Commissioner for Patents

From: Christopher A. Vanderlaan

Received by: _____

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No. of Pages: 38
(including cover page)

SERIAL NO. 10/074,604

PLEASE DELIVER THE ATTACHED TO EXAMINER JUSTIN I. MICHALSKI, ART UNIT 2644.

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PATENT
157835-0008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Lawrence R. FINCHAM

Serial No.: 10/074,604

Filed: February 11, 2002

For: SOUND SYSTEM AND METHOD
FOR SOUND REPRODUCTION

Group Art Unit: 2644

Examiner: Michalski, Justin L.

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**REQUEST FOR RECONSIDERATION OF HOLDING OF
ABANDONMENT PURSUANT TO 37 C.F.R. §1.112 AND MPEP 711.03**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX: (703) 872-9314**REQUEST FOR RECONSIDERATION**

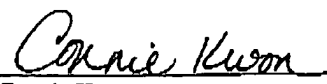
1. Pursuant to 37 C.F.R. § 1.112 and MPEP 711.03, Applicant respectfully requests reconsideration, and withdrawal, of the holding of abandonment set forth in the notice dated October 7, 2004, for failure to file a timely and proper reply to a notice or action by the Patent and Trademark Office (copy attached, *Exhibit A*). This request is being filed promptly after receipt of such notice.

PTO COMMUNICATION DATED 3/12/04 WAS DEFECTIVE

2. Applicant timely filed an Amendment and Response to Office Action in connection with this matter on February 25, 2004. The February 25, 2004 amendment was a complete

CERTIFICATE OF TRANSMISSION

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being transmitted via facsimile ((703) 872-9314) on the date shown below to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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and good faith response to the office action then pending. Shortly thereafter, Applicant received a PTO Office Communication dated March 12, 2004 concerning the status identifiers in the claim listing. Specifically, the Communication indicated that "Amended" is not a proper status identifier (copy attached, *Exhibit B*). However, the Communication did not indicate that any reply or action was required from Applicant. It did not have any due date. Exhibit B is a true and accurate copy from Applicant's prosecution files, after a diligent search was conducted, illustrating that the no due date was included with the Communication. Because no action or reply was indicated as necessary, the Communication was interpreted as merely being informational.

3. Applicant's representatives contacted the Examiner on September 28, 2004 to check on the status of this application. The Examiner indicated that in fact a response period had been set to reply to Communication, as set forth on page 2 thereof (as indicated by the Image File Wrapper, *Exhibit C*). The Examiner was informed that Applicant had not received page 2 of the Communication, and that this was first time Applicant became aware of it. The Examiner indicated that he would re-send another communication with a new date to reply since the first notice was defective, and because Applicant had no way of knowing that a reply was due.
4. However, Applicant subsequently received a Notice of Abandonment dated October 7, 2004, indicating that the case was abandoned due to Applicant's failure to timely file a proper reply to the Office letter mailed on March 12, 2004. The rationale was that the PTO defect (missing page 2) was not called to the PTO's attention in a timely manner.

THE NOTICE OF ABANDONMENT SHOULD BE WITHDRAWN

5. Applicant respectfully requests the holding of abandonment be withdrawn, and that a corrected Amendment (attached as *Exhibit D*) correcting the minor informalities be entered. Applicant respectfully submits that issuance of a Notice of Abandonment under the circumstances was not warranted. Although the stated rationale for the Notice is that Applicant did not call the lack of a reply date to the Office's attention sooner, Applicant had no way of bringing this omission to the Office's attention because page 2 of the Communication had been omitted, and Applicant was unaware of any due date. As noted, Applicant construed the Communication as merely informational. Moreover,

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Applicant had made a *bona fide* attempt to respond to the original office action through its February 25, 2004 submission. Applicant's good faith is also demonstrated by its diligence in contacting the Examiner to check on the status of the instant application after filing the amendment.

6. MPEP 714.02 provides that where an Amendment substantially responds to the rejections, objections or requirements in a non-final Office action, but contains a minor deficiency, the Examiner may simply act upon the Amendment as filed. Here, it is without doubt that the difference in status identification between "Amended" and "Currently Amended" was of an extremely minor nature, that the Amendment fully responded to the pending Office Action on all substantive grounds, and that examination could easily proceed unimpeded by any need for the formal status designations.
7. MPEP 711.03 authorizes a withdrawal of a holding of abandonment under circumstances where, for example, the due date for Applicant's response is disputed or in doubt, or where Applicant reasonably believed a response to be complete. Here, the due date for the Office Communication was not conveyed to Applicant, and so Applicant had no reason to know that a due date existed. Also, Applicant believed that the February 25, 2004 Amendment was a complete response to the pending office action.
8. Applicant is also herewith re-submitting Amendment and Response to Office Action filed on February 25, 2004, with the corrected status identifier in the claims (copy attached, *Exhibit D*). This submission remedies any perceived deficiency in Applicant's prior submission.
9. Applicant respectfully submits that MPEP 710.06 should not apply in the instant situation. MPEP 710.06 applies to circumstances such as an error in citation to a reference in the office action. However, in those cases it is clear from the nature of the office action that a response is due within a prescribed period. In the instant situation, no due date was provided with the office Communication, and there was no indication that any type of response or action was due at all. Thus, unlike the typical situation in which an office action on the merits is issued, Applicant had no reason to believe that any further follow up was required. Applicant did not know that there was a defect in the Communication until much later, after contacting the Examiner and finding out that the PTO had failed to mail the entirety of the Communication. Applying MPEP 710.06 in

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these circumstances would unfairly penalize Applicant for not having received something that was the fault of the Office, and about which Applicant was completely unaware.

10. Accordingly, Applicant respectfully requests withdrawal of the notice of abandonment, and continue with further examination.

FEE

11. Please charge any required fee for this submission to our Deposit Account No. 09-0946.

If any additional fees are associated with this request, the Commissioner is authorized to charge the necessary amount from our Deposit Account No. 09-0946. Should the Examiner have any questions about this submission, he is invited to contact the undersigned attorney to expedite resolution thereof.

Dated: December 20, 2004

Respectfully Submitted,



Christopher A. Vanderlaan
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